CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1934

No. 532

JOHN M. PERRY

vs.

THE UNITED STATES.

ON CERTIFICATE FROM THE COURT OF CLAIMS

FILED NOVEMBER 16, 1934.

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INDEX.

	Original	Print
Certificate from Court of Claims	1	1
Statement of facts	1	1
Questions certified	6	4
Judges' signatures	6	5
Clerk's certificate	8	5

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[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. 42676

JOHN M. PERRY

v.

THE UNITED STATES

Statement of Facts and Certificate

Messrs. Larkin, Rathbone & Perry appeared for the plaintiff.

Messrs. George C. Sweeney, William W. Scott, and Harry LeRoy Jones appeared for the defendant.

Before Chief Justice Booth, Judge Green, Judge Littleton, Judge Williams, and Judge Whaley

STATEMENT OF FACTS

The Court of Claims hereby certifies that the record of the above-entitled case now pending before it discloses the following facts, stated in plaintiff's petition filed June 22, 1934:

1. That ever since January 1, 1933, and for a number of years prior thereto, petitioner has been the owner and registered holder of an obligation of the United States of America, in principal amount of $10,000, known as Fourth Liberty Loan 4¼% Gold Bond of 1933-1938, Serial Number 19831 (a copy of which is annexed in Schedule A), which is one of a series of four and one-quarter per cent, gold bonds of 1933-1938 authorized by an Act of Congress approved September 24, 1917, as amended, and issued pursuant to Treasury Department Circular No. 121, dated September 28, 1918 (a copy of the relevant provisions of [fol. 2] which is annexed in Schedule B), wherein and whereby the defendant, as authorized by said Act and amendments thereto, promised to pay to your petitioner, or his registered assigns, on October 15, 1938, or at any time after October 15, 1933, at the pleasure of the defend-

ant, said principal sum in United States gold coin of the standard of value on the date of issuance, and to pay interest in like gold coin on said principal sum at the rate of four and one-quarter per cent per annum, from April 15, 1920, on April 15 and October 15 in each year, until the principal thereof should be payable.

2. That under and pursuant to the Laws of the United States, namely, an Act approved March 14, 1900, (31 Stat. 45,) which was in force on September 24, 1917, at the time of the issuance of said bond, and at the time of the acquisition of the same by your petitioner, a dollar in gold consisted of 25.8 grains of gold .9 fine.

3. That by virtue of the agreement between your petitioner, as the owner and registered holder of said bond, and the defendant, pursuant to whose authority said bond had been issued, and said Act of September 24, 1917, as amended, and said Treasury Department Circular No. 121, your petitioner was entitled to receive from the defendant at the time of the maturity of said bond, whether by redemption or otherwise, 10,000 gold dollars each containing 25.8 grains of gold .9 fine.

4. That on October 12, 1933, the defendant, through and by the Secretary of the Treasury, in Treasury Department Circular No. 501, dated October 12, 1933, (a copy of the relevant provisions of which is annexed in Schedule C,) and pursuant to said Act of September 24, 1917, as amended, and said Treasury Department Circular No. 121, called for redemption on April 15, 1934, a part of said [fol. 3] issue of Fourth Liberty Loan 4½% Gold bonds of 1933-1938, namely, among others, all outstanding registered bonds bearing serial numbers the final digit of which was 1.

5. That the final digit of the Serial Number of said bond of which your petitioner is the owner and registered holder is 1, the Serial Number being 19831, and said bond is one of those called for redemption on April 15, 1934, as aforesaid.

6. That after April 15, 1934, and on May 24, 1934, your petitioner duly presented said bond to the defendant at the Division of Loans and Currency, Treasury Department, Washington, D. C., in accordance with said Act of Septem-

ber 24, 1917, as amended, said Treasury Department Circular No. 121, and said Treasury Department Circular No. 501, and demanded of said defendant that it redeem said bond by the payment of 10,000 gold dollars each containing 25.8 grains of gold .9 fine.

7. That said bond when presented was properly assigned to "The Secretary of Treasury for redemption", as provided in said Treasury Department Circular No. 501.

8. That the defendant refused to comply with your petitioner's demand and refused to redeem said bond in the manner specified therein and as prescribed by the Act of September 24, 1917, as amended, and said Treasury Department Circular No. 121.

9. That your petitioner then demanded of said defendant 258,000 grains of gold .9 fine, or gold of equivalent value of any fineness, or 16,931.25 gold dollars each containing 15-5/21 grains of gold .9 fine, or 16,931.25 dollars in legal tender currency.

[fol. 4] 10. That the defendant refused to accede to your petitioner's demands, or any one of them, and refused to redeem said bond except by the payment of 10,000 dollars in legal tender currency.

11. That the payment of 10,000 dollars in legal tender currency is not adequate and complete performance of the defendant's obligation.

12. That defendant's said refusals were, as your petitioner is informed and verily believes, on the ground that the Joint Resolution of June 5, 1933, (48 Stat. 113), excused full performance of defendant's obligation.

13. That the Congress of the United States had no power to enact said Joint Resolution.

14. That the operation and effect of said Joint Resolution is to deprive your petitioner of his property without due process of law.

15. That said Joint Resolution is, therefore, unconstitutional and void.

16. That said Joint Resolution was repealed by the Gold Reserve Act of 1934, approved January 30, 1934.

17. That by reason of the circumstances aforesaid, your petitioner was damaged in the sum of $16,931.25, the value of defendant's obligation to petitioner, which sum is now due and owing by the United States to your petitioner, and no part of which has been paid.

18. That your petitioner is the sole owner of the claim herein made and the only person interested therein, and that there has been no assignment or transfer of this claim [fol. 5] or any interest therein, and your petitioner is justly entitled to recover the amount herein claimed from the Government of the United States after allowing all just credits and offsets.

19. That no action upon your petitioner's claim has been had by or before Congress or, except as aforesaid, any Executive Department of the Government.

20. That your petitioner is and at all times herein mentioned was a citizen of the United States; that he has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said Government.

21. That the address of your petitioner is No. 70 Broadway, in the Borough of Manhattan, City, County and State of New York; that the address of the attorneys for your petitioner, Larkin, Rathbone & Perry, Esqs., is No. 70 Broadway, Borough of Manhattan, City, County and State of New York.

22. That the facts stated in this petition are true.

Wherefore, your petitioner asks that judgment may be entered in his favor against the United States for the sum of $16,931.25, with any interest due thereon.

To this petition the defendant has filed a demurrer, on the ground that the petition does not state a cause of action against the defendant.

The defendant, by the filing of this demurrer, admits the facts stated in the petition to be true, and upon the record before it the court finds it necessary for a proper disposition of the case that certain questions of law should be determined. They are as follows:

[fol. 6] QUESTIONS CERTIFIED

1. Is the claimant, being the holder and owner of a Fourth Liberty Loan 4¼% bond of the United States, of the principal amount of $10,000, issued in 1918, which was payable on and after April 15, 1934, and which bond contained a clause that the principal is "payable in United States gold coin of the present standard of value," entitled to receive from the United States an amount in legal tender currency in excess of the face amount of the bond?

2. Is the United States, as obligor in a Fourth Liberty Loan 4¼% gold bond, Series of 1933-1938, as stated in Question One liable to respond in damages in a suit in the Court of Claims on such bond as an express contract, by reason of the change in or impossibility of performance in accordance with the tenor thereof, due to the provisions of Public Resolution No. 10, 73rd Congress, abrogating the gold clause in all obligations?

It is respectfully requested that the Supreme Court of the United States give appropriate instructions on the above questions and certify and transmit and refer the same to the Court of Claims of the United States for its guidance in the further progress of the case.

Fenton W. Booth, Chief Justice. Wm. R. Green, [fol. 7] Judge. Benjamin H. Littleton, Judge. T. S. Williams, Judge. Richard J. Whaley, Judge.

[fol. 8] I, Willard L. Hart, Chief Clerk of the Court of Claims of the United States, do hereby certify that the foregoing certificate in the case of John M. Perry v. The United States, No. 42676, was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof I hereunto subscribe my name and affix the seal of the Court of Claims of the United States, at my office in Washington, D. C., this 15th day of November, A. D. 1934.

Willard L. Hart, Chief Clerk, Court of Claims of the United States. (Seal Court of Claims.)

[fol. 9] [Endorsed:] Court of Claims. No. 42676. John M. Perry v. The United States. Questions to be certified to the Supreme Court.

Endorsed on Cover: File No. 39,160. Court of Claims. Term No. 532. John M. Perry vs. The United States. Certificate. Filed November 16, 1934. File No. 532, O. T., 1934.

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